

In the Matter of Merchant Mariner's Document No. Z-1058176 and all
other Seaman Documents
Issued to: LAWRENCE HEFTER CHAPMAN

DECISION OF THE COMMANDANT

1429

LAWRENCE HEFTER CHAPMAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 3 July 1963, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for four months upon finding him guilty of misconduct. The specification found proved alleges that while serving as Reefer Engineer on board the United States SS STEEL VOYAGER under authority of the document above described, on or about 3 April 1963, while the vessel was in a foreign port, Appellant assaulted and battered another crew member by biting him on the arm. A portion of the specification charging Appellant with assault and battery with a ladder was not found proved.

At the start of the hearing, Appellant represented himself but later summoned professional counsel to defend him. Appellant entered the plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of an oiler (Convey) and the First Assistant Engineer (Reinhardt) of the SS STEEL VOYAGER.

In defense, Appellant offered in evidence the testimony of the Third Assistant Engineer (Hasbrouck), his own testimony, and several exhibits.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge had been proved and the specification proved in part.

FINDINGS OF FACT

On 3 April 1963, Appellant was serving as Reefer Engineer on board the United States SS STEEL VOYAGER and acting under the authority of his document while the vessel lay in the port of Calcutta, India.

At approximately 1100 Appellant entered the ship's engine room

and First Assistant Engineer Reinhardt, upon seeing Appellant unoccupied, stated that he had plenty of work for Appellant to do in the engine room. Appellant responded that he should be paid overtime for such work. The matter was taken before the Chief Engineer who told Appellant to work for Reinhardt whenever he had no specific duties to perform as Reefer Engineer.

At approximately 1300 Appellant, who at this time had no specific duties to perform as Reefer Engineer, re-entered the engine room and remarked that Reinhardt had "hit" him. Reinhardt demanded an explanation and when Appellant did not answer, Reinhardt went to the Chief Mate. The Chief Mate told Reinhardt to send Appellant to him. Reinhardt came back to the engine room and told Appellant that the Chief Mate wanted to see him. Appellant picked up a small wooden ladder which he had taken to the engine room and proceeded toward the exist ladder. Reinhardt blocked Appellant's way and told him several times to leave the ladder behind. Appellant refused and when Reinhardt placed his left hand on the wooden ladder, Appellant shoved it against Reinhardt pinning the latter against a handrail. Before other crew members present in the engine room were able to reach Appellant in order to restrain him, Appellant bit Reinhardt two times on the left forearm.

Following this incident it was discovered that Appellant had a temperature of 101 degrees. A physician was called to treat Appellant and Reinhardt's wounds.

PRIOR RECORD: In 1961 Appellant received a one month outright suspension of his document and two months on six months' probation for creating a disturbance and addressing foul language to the Master of the SS BETHCOASTER. In 1959 Appellant's document was suspended for four months on eighteen months' probation for refusing to obey a lawful order and for using abusive language to the Chief Mate of the SS JOHN B. WATERMAN.

OPINION

After having carefully considered Appellant's numerous assignments of error in the light of the evidence contained in the record, I am of the opinion that the only allegations of error which merit comment pertain to Appellant's plea of self-defense.

It is noted that the Examiner dismissed that portion of the specification which charged Appellant with striking the First Assistant Engineer with a ladder. Appellant, however, was found guilty of committing assault and battery on the same officer by biting him. Appellant admits that he bit the First Assistant. Hence, the sole issue before me is whether the evidence contained

in the record supports Appellant's allegation that he acted in self-defense.

Reinhardt testified that he instructed Appellant to leave the wooden ladder behind and accompany him to see the Chief Mate; Appellant refused and attempted to leave the engine room with the ladder. Reinhardt also stated that he blocked Appellant's passage several times and placed his left hand on the wooden ladder; at this time, Appellant shoved the ladder against Reinhardt, thereby pushing him against a handrail, and bit him twice on the left forearm.

Reinhardt's testimony is corroborated by Convey, an oiler on duty in the engine room at the time of the incident, who stated that, after Appellant and Reinhardt went "round and round" with the ladder for several minutes, Appellant shoved the ladder against Reinhardt pinning him against a handrail; Appellant then bit Reinhardt before the oiler and Third Assistant Engineer were able to restrain Appellant. Convey further testified that there appeared to be no open hostility between the two men when they went "round and round" with the ladder. From this testimony, it is clear that Reinhardt's action of placing his hand on the wooden ladder did not justify Appellant's aggressive behavior of biting Reinhardt on the forearm.

Appellant, in support of his plea of self-defense, asserts on appeal that Reinhardt was exerting pressure against Appellant's neck and hit Appellant on the neck while pinning him with the ladder in such a manner that his only possible defense was to bite Reinhardt on the arm. These statements are not substantiated by Appellant's testimony at the hearing which was simply that Reinhardt put his hand on the ladder and "his arm over toward me" just before the biting occurred. Appellant's testimony agreed with Convey's that there was no aggressive action taken by either seaman until Appellant shoved the ladder against Reinhardt. At the hearing, Appellant did not disagree with Convey's testimony that the biting took place before Convey and Hasbrouck reached Appellant to pull him away from Reinhardt. The account of violence on the part of Reinhardt, which is presented on appeal, cannot be considered to replace the version related by Appellant at the hearing.

Appellant testified that oiler Convey and Third Assistant Engineer Hasbrouck witnessed this incident. For some unexplained reason, the latter was not asked for his version when he testified briefly at the hearing as a witness for the defense. In Appellant's testimony, he also recognized the fact that the Chief Mate could observe what was going on from the top of the ladder Appellant was attempting to ascend. But the Chief Mate was not

called as a witness.

In view of the fact that the burden of going forward with the evidence in support of his plea of self-defense was not met by Appellant, the charge and specification were proved by substantial and reliable evidence.

It is noted that Appellant had a fever of 101 degrees at the time the offense took place. However, it is not felt that this was sufficient to absolve Appellant from the responsibility for his conduct.

In view of Appellant's prior record of disorderly behavior and the fact that the present offense was an assault on a ship's officer, the order of the Examiner is felt to be neither excessive nor unjust.

ORDER

The Order of the Examiner dated at New Orleans, Louisiana, on 3 July 1963, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 19th day of November 1963.